Special Issue on The Indochinese War

The International Law We Violated in Our Reprisal Raids on North Vietnam

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What Few Know About the Tonkin Bay Incidents

The American government and the American press have kept the full truth about the Tonkin Bay incidents from the American public. Let us begin with the retaliatory bombing raids on North Vietnam. When I went to New York to cover the UN Security Council debate on the affair, UN correspondents at lunch recalled cynically that four months earlier Adlai Stevenson told the Security Council the U.S. had "repeatedly expressed" its emphatic disapproval "of retaliatory raids, wherever they occur and by whomever they are committed." But none mentioned this in their dispatches.

When Britain Staged Reprisals

On that occasion, last April, the complaint was brought by Yemen against Britain. The British, in retaliation for attacks from Yemen into the British protectorate of Aden, decided to strike at the "privileged sanctuary" from which the raids were coming. The debate then might have been a preview of the Vietnamese affair. The British argued that their reprisal raid was justified because the Fort they attacked at Harib was "a centre for subversive and aggressive activities across the border." The Yemeni Republicans in turn accused the British of supporting raids into Yemen by the Yemeni Royalists. "Obviously," Stevenson said, "it is most difficult to determine precisely what has been happening on the remote frontiers of Southern Arabia." But he thought all UN members could "join in expressing our disapproval of the use of force by either side as a means of solving disputes, a principle that is enshrined in the Charter," especially when such "attacks across borders" could "quickly escalate into full-scale wars." The outcome was a resolution condemning "reprisals as incompatible with the purposes and principles of the United Nations." That resolution and Stevenson's words are as applicable to Southeast Asia as to Southern Arabia. Though the Czech delegate cited them in his speech to the Council on August 7 about the Vietnamese affair, no word of this appeared in the papers next day.

In the August 7 debate, only Nationalist China and Britain supported the U.S. reprisal raids. The French privately recalled the international uproar over the raid they had made under similar circumstances in February, 1958, into the "privileged sanctuary" afforded the Algerian rebels by Tunisia. They struck at the Sakiet-Sidi-Youssef camp just across the border. Senators Kennedy, Humphrey, Morse and Knowland denounced the raid and Eisenhower warned the French the U.S. would not be able to defend their action in the Security Council.

Reprisals in peacetime were supposed to have been outlawed by the League of Nations Covenant, the Kellogg Pact and the United Nations Charter. All of them pledged peaceful settlement of disputes. Between nations, as between men, reprisals are lynch law. Some White House ghost writer deserves a literary booby prize for the mindless jingle he turned out to defend ours in Vietnam. "The world remembers, the world must never forget," were the words he supplied for Johnson's speech at Syracuse, "that aggression unchallenged is aggression unleashed." This gem of prose is a pretty babble. What the world (and particularly the White House) needs to remember is that aggression is unleashed and escalated when one party to a dispute decides for itself who is guilty and how he is to be punished. This is what is happening in Cyprus, where we have been begging Greeks and Turks to desist from the murderous escalation of reprisal and counter-reprisal. Johnson practices in Southeast Asia what he deplores in the Mediterranean.

Whose Freedom? What Freedom?

"He (Stevenson) ventured to repeat that the peoples of Laos, Vietnam and Cambodia wished to be left alone. To whom was he addressing himself? Would he not do better in telling this to his Government, to the Pentagon, to the CIA? He alleged that the U.S. is in Southeast Asia for the purpose of helping friends to preserve their opportunity to be free. What kind of friends are these? Yesterday it was the Ngo family, with their torture chambers; then it was a military junta; and now it is Khanh who, in order to save himself from impending fall, has just now proclaimed martial law and suppressed the last vestiges of freedom in the remnant of the territory he holds with U.S. support, and is trying to create new provocation of war and following the example set by the aggression on the coast of the Democratic Republic of Vietnam, by unleashing aggressive actions against his neighbors. Tomorrow it may be perhaps another puppet, equally as corrupt or possibly even more so, and perhaps more brutal."

—Czech delegate to the Security Council Aug. 7.

More Reprisal Raids Coming?

Public awareness of this is essential because the tide is running strongly toward more reprisal raids in the Far East. The first was the raid by U.S. Navy planes in June on Pathet Lao headquarters in Laos in retaliation for shooting down two reconnaissance planes. We would not hesitate to shoot down reconnaissance planes over our own territory; such overflights are a clear violation of international law. But the U.S., now seems to operate on the principle that invasion of other people's skies is our right, and efforts to interfere with it (at least by weaker powers) punishable by reprisal. This is pure "might is right" doctrine.

The very day we took the Vietnamese affair to the Security

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Council, Cambodia illustrated a sardonic point to be found in Schwarzenberger's *Manual of International Law*—"military reprisals are open only to the strong against the weak." The UN distributed to Security Council members the latest in a series of complaints from Cambodia that U.S. and South Vietnamese forces had been violating its borders. It alleged that at dawn on July 31 "elements of the armed forces of the Republic of Vietnam, among them Americans in uniform," opened fire "with automatic weapons and mortars," seriously wounding a peasant and killing a bull. If Cambodia could only afford a fleet large enough, we suppose it would be justified by Johnsonian standards in lobbing a few shells into the U.S.A.

The Law We Applied at Nuremberg

Even in wartime, reprisals are supposed to be kept within narrow limits. Hackworth's *Digest,* the State Department's huge Talmud of international law, quotes an old War Department manual, *Rules of Land Warfare,* as authoritative on the subject. This says reprisals are never to be taken "merely for revenge" but "only as an unavoidable last resort" to "enforce the recognized rules of civilized warfare." Even then reprisals "should not be excessive or exceed the degree of violence committed by the enemy." These were the principles we applied at the Nuremberg trials. Our reprisal raids on North Vietnam hardly conformed to these standards. By our own account, in self-defense, we had already sunk three or four attacking torpedo boats in two incidents. In neither were our ships damaged nor any of our men hurt; indeed, one bullet imbedded in one destroyer hull is the only proof we have been able to muster that the second of the attacks even took place. To fly 64 bombing sorties in reprisal over four North Vietnamese bases and an oil depot, destroying or damaging 25 North Vietnamese PT boats, a major part of that tiny navy, was hardly punishment to fit the crime. What was our hurry? Why did we have to shoot from the hip and then go to the Security Council? Who was Johnson trying to impress? Ho Chi-minh? Or Barry Goldwater?

This is how it looks on the basis of our own public accounts. It looks worse if one probes behind them. Here we come to the questions raised by Morse of Oregon on the Senate floor Aug. 5 and 6 during debate on the resolution giving Johnson a pre-dated declaration of war in Southeast Asia. Morse was speaking on the basis of information given in executive session by Secretaries Rusk and McNamara to a joint session of the Senate Committee on Foreign Relations and Armed Services. Morse said he was not justifying the attacks on U.S. ships in the Bay of Tonkin but "as in domestic criminal law," he added, "crimes are sometimes committed under provocation" and this "is taken into account by a wise judge in imposing sentence."

Morse revealed that U.S. warships were on patrol in Tonkin Bay nearby during the shelling of two islands off the North Vietnamese coast on Friday, July 31, by South Vietnamese vessels. Morse said our warships were within 3 to 11 miles of North Vietnamese territory, at the time, although North Vietnam claims a 12-mile limit. Morse declared that the U.S. "knew that the bombing was going to take place." He noted that General Khanh had been demanding escalation of the war to the North and said that with this shelling of the islands it was escalated. Morse declared the attack was made "by South Vietnamese naval vessels—not by junks but by armed vessels of the PT boat type" given to South Vietnam as part of U.S. military aid. Morse said it was not just another attempt to infiltrate agents but "a well thought-out military operation." Morse charged that the presence of our warships in the proximity "where they could have given protection, if it became necessary" was "bound to be looked upon by our enemies as an act of provocation." The press, which dropped an Iron Curtain weeks ago on the anti-war speeches of Morse and Gruening, ignored this one, too.

Neither Party for Peace

"The last episode—the attack by North Vietnam vessels on U.S. naval vessels—I consider an inevitable development of the U.S. steady escalation of our own military activities. . . . I regret, and consider it a pity, that both our political parties appear now to be committed to a policy of war. Yet American public opinion, judged by my mail, is overwhelmingly committed to a different policy—a policy of peace. My mail pours in with virtual unanimity on this subject. It comes from a truly representative cross section of the American people. It includes bishops, deans of colleges, university professors, business executives, teachers, retired Army officers."

—Sen. Gruening (D. Alaska), in the Senate, Aug. 6 who with Morse cast the only two votes in Congress against the war resolution.

Yet a reading of the debate will show that Fulbright and Russell, the chairmen of the two committees Rusk and McNamara had briefed in secret session, did not deny Morse's facts in their defense of the Administration and did not meet the issue he raised. Fulbright's replies to questions were hardly a model of frankness. When Ellender of Louisiana asked him at whose request we were patrolling in the Bay of Tonkin, Fulbright replied:

These are international waters. Our assistance to South Vietnam is at the request of the South Vietnamese government. The particular measures we may take in connection with that request is our own responsibility.

Senator Nelson of Wisconsin wanted to know how close to the shore our ships had been patrolling:

Mr. Fulbright: It was testified that they went in at least 11 miles in order to show that we do not recognize a 12-mile limit, which I believe North Vietnam has asserted.

Mr. Nelson: The patrolling was for the purpose of demonstrating to the North Vietnamese that we did not recognize a 12-mile limit?

Mr. Fulbright: That was one reason given. . . .

Mr. Nelson: It would be mighty risky if Cuban PT boats were firing on Florida, for Russian armed ships or destroyers to be patrolling between us and Cuba, 11 miles out.

When Ellender asked whether our warships were there to protect the South Vietnamese vessels shelling the islands, Fulbright replied:

The ships were not assigned to protect anyone. They were conducting patrol duty. The question was asked specifically of the highest authority, the Secretary of Defense and the Secretary of State. They stated without equivocation that these ships, the Maddox and the C. Turner Joy, were not on convoy duty. They had no connection whatever with any Vietnamese ships that might have been operating in the same general area.

Fulbright did not deny that both destroyers were in the

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area at the time of the July 31 shelling and inside the territorial limits claimed by North Vietnam. He did not deny Morse's charge that the U.S. knew about the shelling of the islands before it took place. He merely denied that the warships were there to cover the operation in any way. Our warships, according to the official account, just happened to be hanging around. Morse's point—which neither Fulbright nor Russell challenged—was that they had no business to be in an area where an attack was about to take place, that this was bound to appear provocative. Indeed the only rational explanation for their presence at the time was that the Navy was looking for trouble, daring the North Vietnamese to do something about it.

Why Our Ships Moved Out to Sea

Morse made another disclosure. "I think I violate no privilege or secrecy," he declared, "if I say that subsequent to the bombing, and apparently because there was some concern about the intelligence that we were getting, our ships took out to sea." Was this intelligence that the ships were about to be attacked within the territorial waters claimed by North Vietnam? Morse said our warships went out to sea and "finally, on Sunday, the PT boats were close enough for the first engagement to take place." This dovetails with a curious answer given by Senator Russell at another point in the debate to Senator Scott of Pennsylvania when the latter asked whether Communist China had not published a series of warnings (as required by international law) against violations of the 12-mile limit. Russell confirmed this but said, "I might add that our vessels had turned away from the North Vietnamese shore and were making for the middle of the gulf, *where there could be no question,* at the time they were attacked."

The italics are ours and call attention to an evident uneasiness about our legal position. The uneasiness is justified. A great many questions of international law are raised by the presence of our warships within an area claimed by another country as its territorial waters while its shores were being shelled by ships we supplied to a satellite power. There is, first of all, some doubt as to whether warships have a right of "innocent passage" through territorial waters even under peaceful circumstances. There is, secondly, the whole question of territorial limits. The 3-mile limit was set some centuries ago by the range of a cannon shot. It has long been obsolete but is favored by nations with large navies. We make the 3-mile limit the norm when it suits our purposes but widen it when we need to. We claim another 9 miles as "contiguous waters" in which we can enforce our laws on foreign ships. While our planes on reconnaissance operate three miles off other people's shores, we enforce an Air Defense Identification Zone on our own coasts, requiring all planes to identify themselves when two hours out. In any case, defense actions may be taken beyond territorial limits. The law as cited in the U.S. Naval Academy's handbook, *International Law for Sea-Going Officers* is that "the right of a nation to protect itself from injury" is "not restrained to territorial limits . . . It may watch its coast and seize ships that are approaching it with an intention to violate its laws. It is not obliged to wait until the offense is consummated before it can act."

Prize Explanation

Mr. Robert PIERPONT (CBS News): Do you have any thoughts yourself on why the North Vietnamese Navy would have decided to take on the U.S. Navy?

Senator Eugene McCARTHY (D. Minn.): I don't know. It may be that they were bored."

—On CBS Face The Nation, Aug. 9.

If the Cubans Shelled Key West

More important in this case is the doctrine of "hot pursuit." The North Vietnamese radio claims that in the first attack it chased the U.S. warships away from its shores. "The right of hot pursuit," says Schwarzenberger's *Manual of International Law,* "is the right to continue the pursuit of a ship from the territorial sea into the high sea." The logic of this, our Naval Academy handbook explains, is that "the offender should not go free simply because of the proximity of the high seas." It is easy to imagine how fully these questions would be aired if we spotted Russian ships hanging around in our waters while Cuban PT boats shelled Key West. Our actions hardly fit Johnson's description of himself to the American Bar Association as a champion of world law.

There are reasons to believe that the raids at the end of July marked a new stepup in the scale of South Vietnamese operations against the North. These have been going on for

U.S. Secret Operations Against North Vietnam Began 3 Years Before Rebellion in South

"However sensational the latest events in the Gulf of Tonkin and whatever their exact circumstances, they should not make one forget that the American 'Special Services' for several years have encouraged and supported guerrilla operations against North Vietnamese territory.

"Thus as early as 1957 there was created at Saigon a 'service of liaison in the presidency', headed by several American specialists and charged with the organization, training and command of parachutist commandoes specializing in intelligence and counter-espionage. Within this service 'Section 45,' assisted by four American advisers, was trained for operations in the North. . . . These recruits finished one stage of training in a camp at Nha-Trang. Then the best were sent on to Formosa or Guam for more advanced training. It was only then that these agents, grouped in commandoes, tried their luck in Tonkin. . . .

"Until 1960, however, the pace of these operations was very slow. The United States had not yet intervened directly in the second Indochinese war and the southern commandoes lacked zeal. Things changed from 1961 on when Washington decided to step up its efforts in Vietnam. The objectives also were to be changed. The purpose henceforth would be to disorganize the economic and military potential of the North in order to prevent its aid to the rebels in the South, an aid one feared without yet having formal proof of it. The overturning of the Communist regime was consigned to second place. The famous Staley-Taylor plan, which forecast the pacification of the south in 18 months, assigned an important role to commando operations against the North. At the same time, the government of Hanoi, from 1961 on, more and more often announced the capture of 'American-Diemist saboteurs, caught in the act.' . . . Most of the agents intercepted had been recruited among Catholic refugees from Tonkin or former soldiers in the French army."

—Georges Chaffard in Le Monde, Aug. 7.

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Was the Reprisal Raid A Long Planned Strategic Bombardment?

some time. In fact, a detailed account in *Le Monde* (Aug. 7) says they began (See Box p. 3) three years before the rebellion broke out in South Vietnam. Ever since January of this year the U.S. press has been full of reports that we were planning to move from infiltration and commando operations to overt attacks against the North. *Newsweek* (March 9) discussed a "Rostow Plan No. 6" for a naval blockade of Haiphong, North Vietnam's main port, to be followed by PT boat raids on North Vietnamese coastal installations and then by strategic bombing raids. In the middle of July the North Vietnamese radio reported that the U.S. had given South Vietnam 500 "river landing ships" and four small warships from our mine sweeping fleet. A dispatch from Hong Kong in the *New York Times* (Aug. 14) quoted an "informed source" as saying that the North Vietnamese had concealed the fact "that the shelling of the islands" on July 31 "had been directed at a sensitive radar installation." The shelling of radar installations would look from the other side like a prelude to a landing attempt.

How The Public Is Brain-Washed

These circumstances cast a very different light on the Maddox affair, but very few Americans are aware of them. The process of brain-washing the public starts with off-the-record briefings for newspapermen in which all sorts of far-fetched theories are suggested to explain why the tiny North Vietnamese navy would be mad enough to venture an attack on the Seventh fleet, one of the world's most powerful. Everything is discussed except the possibility that the attack might have been provoked. In this case the "information agencies," i.e. the propaganda apparatus of the government handed out two versions, one for domestic, the other for foreign consumption. The image created at home was that the U.S. had manfully hit back at an unprovoked attack—no paper tiger we. On the other hand, friendly foreign diplomats were told that the South Vietnamese had pulled a raid on the coast and we had been forced to back them up. As some of the truth began to trickle out, the information agencies fell back on the theory that maybe the North Vietnamese had "miscalculated." That our warships may have been providing cover for an escalation in raiding activities never got through to public consciousness at all.

The two attacks themselves are still shrouded in mystery. The Maddox claims to have fired three warning shots across the bow of her pursuers; three warning shots are used to make a merchantman heave-to for inspection. A warship would take this as the opening of fire, not as a warning signal. The North Vietnamese radio admitted the first encounter but claimed its patrol boats chased the Maddox out of territorial waters. The second alleged attack North Vietnam calls a fabrication. It is strange that though we claim three boats sunk, we picked up no flotsam and jetsam as proof from the wreckage. Nor have any pictures been provided. Whatever the true story, the second incident seems to have triggered off a long planned attack of our own. There are some reasons to doubt that it was merely that "measured response" against PT bases it was advertised to be. Bernard Fall, author of *"The Two Vietnams,"* who knows the area well, pointed out in the *Washington Post* Aug. 9 that "none of the targets attacked" in the reprisal raids "was previously known as a regular port or base area. Hon-Gay, for example, was one of the largest open-pit coal mining operations in Asia, if not the world." Was this one of the strategic industrial targets in Rostow's "Plan No. 6?"

The Day After The Battle Was Over

"I find the speech of the Senator from South Dakota [Mr. McGovern] very interesting but very belated. For approximately 6 months the Senator from Alaska [Mr. Gruening] and the Senator from Oregon have been urging support for the very suggestions which the Senator from South Dakota made this morning. If Senators who have held the views of the Senator from South Dakota—and many of them have held them privately for these many months—had joined the Senator from Alaska and the Senator from Oregon 5 or 6 months ago in urging a diplomatic settlement of the Asiatic strife under the rules of international law, we might have been able to change the warmaking course of our government in Asia. But one of the saddest things is that during all those months the talk of many Senators in the cloakroom has been noticeably different from their silence on the floor of the Senate."

—Morse Aug. 8, day after the war resolution passed.

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